

March 13, 1998

MEMORANDUM TO: Distribution

FROM: Michael J. Rubino, Associate Director
 Acquisition Services Branch

SUBJECT: Policy Memorandum No. 98-010 -
 Loan Servicing Contracts

1. Purpose. The purpose of this Policy Memorandum is to clarify and formally establish the roles and responsibilities of the Division of Administration (DOA), Division of Resolutions and Receiverships (DRR), and the Division of Finance (DOF) in contractor oversight management and contract administration for FDIC loan servicing contracts. **[This is a restatement of the Memorandum of Understanding jointly issued by DOA, DRR, and DOF on loan servicing (September 1997, MOU 97-001)].**
2. Reference. DOA/DRR/DOF Memorandum of Understanding, September, 1997, MOU 97-001
3. Scope. This Policy Memorandum applies to all Contracting Officers and other Acquisition Services Branch (ASB) personnel, and DRR Oversight Managers/Technical Monitors and DOF Technical Monitors involved in administration of loan servicing contracts.
4. Background.

Recognizing the DOA/DRR/DOF have common business goals, the separate but interrelated activities for contract oversight and administration must be performed through effective teamwork by the Oversight Manager (OM), DRR, Technical Monitors (TM), DRR and DOF, and the Contracting Officer (CO), DOA. This Policy Memorandum delineates the roles and responsibilities of the FDIC organizations and designated personnel performing contractor oversight and contract administration activities. It is in conjunction with other CO, OM, and TM responsibilities stated in the APM.

While the OM acts as the primary FDIC contact with the contractor, the OM is not responsible for overseeing all of the FDIC monitoring functions. Each FDIC division is responsible for performing their respective monitoring assignments as defined in this Policy Memorandum. For example, DOF is responsible for performing reviews of contractor bank reconciliations. It is not the responsibility of the OM to oversee the work completed by DOF. The DOA Acquisition Policy Manual is modified to reflect this division of duties between DRR and DOF.

5. APM Changes. In accordance with the foregoing, the APM is changed to incorporate the terms of the September MOU providing guidelines for oversight management and contract administration for FDIC loan servicing contracts. Therefore, APM Chapter 8, *Special Contract Administration Procedures*, is changed to add a new Section J., entitled *Oversight Management and Administration of Loan Servicing Contracts*, as follows:

“8.J. OVERSIGHT MANAGEMENT AND ADMINISTRATION OF LOAN SERVICING CONTRACTS

8.J.1. Organizational Responsibilities. The following functional areas work in concert to provide comprehensive oversight management and contract administration for contractors under the FDIC’s loan servicing contracts. It is recognized that these functional areas have integral responsibilities in the oversight program. This Policy Memorandum focuses on DRR and DOF accountability as Oversight Managers and Technical Monitors, respectively, for oversight of contractors. In addition, it also focuses on DOA responsibility for administering the contract to ensure performance by the contractor and FDIC.

- 8.J.1.a. *DOA Acquisition Services Branch.* Responsible for ensuring contract performance by both the contractor and FDIC; and for general administration of the loan servicing contract, contract enforcement, and resolution of contract issues.

- 8.J.1.b. ***DRR Contract Management, Field Operations Branch.*** Primarily responsible for monitoring the contractor's technical performance and quality of work and for ensuring that the contractor performs the work as required under the loan servicing contract and appropriate FDIC liquidation policies as incorporated by reference under the contract.
- 8.J.1.c. ***DOF Field Finance Center.*** Responsible for recording all financial transactions to FDIC systems; and for monitoring contractor cash management, reconciliation, conversion, and reporting processes to ensure that the highest standards of financial integrity are maintained.

8.J.2. DOA/DRR/DOF Oversight Team: Primary Parties.

- 8.J.2.a. ***DOA Contracting Officer.*** The Contracting Officer (CO) is responsible for administration of the contract and is the only person who may enter into or change a contract on behalf of FDIC. CO responsibilities include, but are not limited to, monitoring the contractor for compliance with the contract terms and conditions, approving contractor payments, enforcing contract provisions, executing modifications, assisting the OM as requested, and notifying the contractor regarding performance deficiencies.
- 8.J.2.b. ***DRR Oversight Manager.*** The Oversight Manager (OM) will be confirmed by the Contracting Officer with an OM Confirmation Letter, which describes the OM responsibilities and authorities. The OM is the primary FDIC contact point with the contractor and is responsible for coordinating efforts of the oversight team members, including DRR and DOF TMs. The OM, pursuant to the authority of the OM Confirmation Letter, coordinates with the contractor on technical matters of

performance, gives technical clarification on the Statement of Work, inspects and accepts work and/or deliverables under the contract, verifies satisfactory delivery of contract items and/or performance, completes the Contractor Performance Evaluation Form at the conclusion of contract, and performs other duties as delineated in the Confirmation Letter.

DRR TMs will work for and assist the OM with contract management activities. The DRR OM and TMs will work closely with the DOF TMs on the contract to ensure that the needs of the FDIC are met through the terms and conditions of the contract. Performance issues noted by the TMs will be documented and provided to the OM, who will promptly notify the Contracting Officer in writing of any noncompliance, deviation in performance, or failure to make progress.

- 8.J.2.c. ***DOF Technical Monitors.*** The DOF Technical Monitors (TMs) will be confirmed with a Letter of Technical Monitor Confirmation from the Contracting Officer. DOF will designate a lead TM to act as a primary contact for communicating with the OM, other DOF TMs, and the contractor. In accordance with the TM Confirmation Letter, the TM will provide technical guidance to the contractor on matters including, but not limited to, cash management, accounting, remittance reporting, and relevant internal controls. The TM will provide copies to the OM of correspondence and reports related to their assigned monitoring responsibilities for inclusion in the OM's oversight files. The TM may use support staff as liaisons who will represent DOF when dealing with the contractor exclusively for purposes of monitoring DOF assigned functions.

8.J.3. Monitoring Plans. Specific Monitoring Plans (MPs) will be developed for each loan servicing contract to establish accountability among FDIC personnel for monitoring various aspects of the contract and to make special provisions that may be necessary for monitoring the servicing of different types of assets. For example, tasks associated with monitoring a full servicing contract for single family assets will differ from tasks associated with monitoring a master servicer reporting activity for loans serviced by others.

MPs will be developed and signed by the Oversight Manager (OM), the Technical Monitors (TMs), and the Contracting Officer (CO) to signify formal acknowledgment of their assigned responsibilities. The Letters of Confirmation issued by the DOA CO to the OM and TMs will be updated to reflect the responsibilities defined in each MP. MPs will be modified to reflect any personnel changes on the oversight team. The updated MP will be signed and placed in the OM/TM/CO files and distributed to notify the oversight team members and management of changes in contract oversight and administration staff accountability.

8.J.4 DOA/DRR/DOF Oversight Team: Monitoring Responsibilities.

8.J.4.a. *DOA Monitoring Responsibilities.*

- (1) CONTRACT MANAGEMENT:
 - Enforce Contract Terms and Conditions
 - Resolve Contractual Issues
- (2) CONTRACT ADMINISTRATION:
 - Develop Contract Administration Plan
 - Maintain Key Personnel List
 - Review Eligibility Certifications (Fitness and Integrity)
 - Maintain Performance Evaluation
 - Process/Approve Contract Modifications
 - Send Formal Notifications to Contractor

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- (3) CLAIMS/DISPUTES:
 - Resolve Performance Issues
 - Resolve Claims, disputes
 - Track Audit Responses
- (4) CONTRACTOR PAYMENTS:
 - Review and approve contractor payments; monitor payments for timeliness and accuracy; verify the accuracy of the contractor's payment of subcontractor costs
 - Monitor the expenditure ceiling under each contract (joint DOA/DRR responsibility)

8.J.4.b. ***DRR Monitoring Responsibilities.***

- (1) OVERSIGHT MANAGEMENT:
 - Review asset stratification to determine level of contractor delegated authority
 - Maintain current Powers of Attorney for contractor
 - Sample, track and review cases for decisions and delegation exceptions
 - Serve as primary contact between FDIC and contractor; responsible for approval of specific MP
- (2) DEFAULT MANAGEMENT:
 - Monitor collection activity
 - Review matured/delinquent loans for workouts and modifications
 - Review assets in foreclosure, litigation and bankruptcy for disposition
 - Review delinquent assets for final disposition and/or foreclosure
 - Evaluate high risk assets with environmental concerns and develop disposition plans

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- (3) GENERAL SERVICING:
 - Monitor and review Congressional, FOIA and customer inquiries for responsiveness
 - Verify evidence and payment of hazard insurance and taxes (escrow)
 - Verify 1098s, and 1099s are sent when required
 - Review data integrity and certification plans
 - Perform periodic review of files, notes and collateral for appropriate documentation and security
 - Monitor contractor's support of asset marketing initiatives
 - Review all contractor policies and procedures for adherence to FDIC guidelines
 - Monitor contractor's responsiveness to all reporting, audit and SAVE requests
- (4) CONTRACTOR PAYMENTS:
 - Verify satisfactory delivery of contract items and/or performance
 - For fees, expenses, advances invoiced for payment: prepare Payment Authorization Voucher and send to DOF for processing
 - For fees, expenses, advances netted from the remittance: prepare a monthly Memorandum of Certification to approve sums netted for payment and send copy to DOF/DOA
 - Monitor the expenditure ceiling under each contract (joint DRR/DOA responsibility)

8.J.4.c. ***DOF Monitoring Responsibilities.***

- (1) CASH MANAGEMENT:
 - Review cash management/controls
 - Establish/close-out bank accounts
 - Monitor cash suspense balances
 - Monitor accounts payable
 - Review CTM remittance processing/reporting and clear exception items

- (2) RECONCILIATIONS AND REPORTING:
 - Review bank account reconciliations; clear exception items for all receipt, disbursement, custodial bank accounts
 - Perform sales reconciliations
 - Perform conversion reconciliations
 - Review investor/agency reporting
 - Review participation reporting
- (3) PORTFOLIO ADMINISTRATION:
 - Develop and execute conversion plans
 - Resolve conversion balancing issues
 - Validate FIN termination processing
 - Sample/validate loan payoff calculations
 - Sample/validate ARM adjustments and system calculations of P&I, T&I
 - Sample/validate late charges accrual
 - Sample/validate compliance with IRS regulations for issuing forms 1098, 1099A, and 1099C
- (4) CONTRACTOR PAYMENTS:
 - Process Payment Authorization Vouchers approved by DOA/DRR
 - Process contractor remittances concurrent with DRR review of fees, expenses and/or advances netted from the remittance (DOF processing may occur prior to DRR review and approval)
 - As requested, provide consultation and audit services to DRR to assist in the development of methods and tests to facilitate DRR monthly review of contractor fees, expenses and/or advances either invoiced or netted from the remittance

8.J.5. Contractor Visitation. DRR and DOF will conduct visitations in accordance with the terms and conditions of the loan servicing contract and the specific MPs to review the controls and processes in place, verify contractor performance against scheduled/reported performance, and ensure that the highest standards of financial integrity are maintained. When

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appropriate, visits will be conducted using a team approach (DOA/DRR/DOF) to minimize the number of visits so as not to interfere with the contractor's performance.

8.J.6. Audits. DOA, DRR and DOF representatives will be responsible for notifying each other of any and all contacts from the GAO, OIG, OICM, or other auditing groups. The DOA point of contact will be the Contracting Officer. The DRR Point of Contact for all audits is the Office of Internal Review. The DOF Point of Contact for all audits is the Quality Assurance Unit.

Any audit findings related to functions performed by a contractor will be addressed by DOA, DRR, or DOF, depending upon the subject of the finding. Representatives from each division will participate in entrance and exit meetings and discussions of any preliminary findings. Inquiries and written matters for further consideration and related documentation will be shared and joint responses provided if appropriate. DOA, DRR and DOF representatives will consult one another for scheduling and attending meetings with audit team representatives.

8.J.7. Support Staff. The DOF TM may use other DOF personnel and/or contractor support to act as liaisons for requests to the contractor which pertain exclusively to contractor functions DOF is responsible for monitoring. The liaisons will work closely with the TM on any issues related to the contractor. For issues requiring OM/TM assistance, liaisons will provide a briefing, including a summary of the issue, chronology of efforts and communications with the contractor, and copies of relevant documentation.”

6. Effective Date. This Policy Memorandum is effective immediately.
7. Contact. If you have any questions regarding this Policy Memorandum, please call David McDermott on (202) 942-3434.

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